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Attorneys for Defendant and Cross-Complainant
PAULEY CONSTRUCTION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIFA TUIAKI and LUPE TUIAKI,

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC
COMPANY, PAULEY
CONSTRUCTION, INC., TRAFFIC
SOLUTIONS, INC., ADELPHIA
TELECOMMUNICATIONS CO., INC.,
SBC TELECOMMUNICATIONS, INC.,
MOBILE TOOL INTERNATIONAL, INC.
dba TELSTA, COUNTY OF
MENDOCINO, STATE OF
CALIFORNIA, PACIFIC BELL
TELEPHONE COMPANY, PACIFIC
TELESIS GROUP, SBC OPERATIONS,
INC., and DOES 1 to 50,

Defendants.

AND RELATED CROSS-ACTION.

CASE NO.: C07 2257 JCS

**PAULEY CONSTRUCTION, INC'S.
NOTICE OF MOTION AND MOTION
TO DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF MAY
BE GRANTED [F.R.C.P. 12(b)(6)]**

Cross-complaint Filed: 11/2/05
Am. Cross-complaint Filed: 2/22/07
2nd Am. Cross-complaint Filed: 4/11/07

Date: June 22, 2007
Time: 9:30 a.m.
Location: Courtroom A, 15th Floor
Judge: Magistrate Judge
Joseph C. Spero

JURY TRIAL DEMANDED

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 22, 2007, at 9:30 a.m. or soon thereafter as the matter
can be heard in Courtroom A, 15th Floor, of the above-noted Court, located at 450 Golden Gate
Avenue, San Francisco, California 94102, Cross-defendant PAULEY CONSTRUCTION INC.

PAULEY CONSTRUCTION, INC'S. NOTICE OF MOTION AND
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE GRANTED [F.R.C.P. 12(b)(6)];
Case # C07 2257 JCS

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miss-12b6\Dismiss-Notice

1 ("Pauley") will move the Court to dismiss Cross-complainant Adelphia Communication Corporation's
 2 ("Adelphia") Cross-complaint pursuant to F.R.C.P. 12(b)(6) because Cross-complainant Adelphia's
 3 Cross-complaint fails to state a claim upon which relief can be granted, on the grounds that Adelphia's
 4 Second Amended Cross-complaint fails to state facts sufficient to constitute a cause of action against
 5 the moving Cross-defendant, thus there is a lack of a cognizable legal theory or the absence of
 6 sufficient facts alleged by Adelphia under a cognizable legal theory. It cannot be determined
 7 therefrom how Cross-defendant could be liable to Cross-complainant Adelphia, who fails to
 8 adequately plead the relevant contract claims against Pauley. In addition, Adelphia's causes of action
 9 for Implied Equitable Indemnity and Contribution are barred under California Code of Civil Procedure
 10 § 877.6(c).

11 The motion will be based on this Notice of Motion and Motion, the Memorandum of Points
 12 and Authorities served and filed herewith, the Request for Judicial Notice served and filed herewith,
 13 the pleadings and papers filed herein, and any other written or oral argument or evidence that may be
 14 presented at the hearing on this motion.

15 JURY DEMAND

16 Pauley Construction, Inc. hereby demands a trial by jury in this action.

17 DATED: May 14, 2007

CLAPP, MORONEY, BELLAGAMBA
 and VUCINICH

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 20 By: 

JEFFREY M. VUCINICH
 JOSHUA W. ROSE
 Attorneys for Defendant/Cross-Complainant/
 Cross-Defendant
 PAULEY CONSTRUCTION, INC.